

January 9, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands – WT Docket No. 03-66*

NOTICE OF ORAL EX PARTE COMMUNICATION

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am writing to advise that on Friday, January 6, 2006, Terri Natoli and Nadja Sodos-Wallace of Clearwire Corporation, George Alex of Nextwave Broadband Inc., Howard Verlin of Pegasus Communications Corporation, Robert Finch and Trey Hanbury of Sprint Nextel Corporation, and the undersigned on behalf of the Wireless Communications Association International, Inc., met with Fred Campbell, Legal Advisor to Chairman Martin to express the opposition of wireless broadband system developers to the proposed reinstatement of a rule limiting Educational Broadband Service ("EBS") excess capacity leases to a maximum term of fifteen years.

The participants emphasized that adoption of the proposed maximum lease term would undermine the Commission's efforts to promote rapid deployment of wireless broadband facilities using leased EBS spectrum for the benefit of both consumers and educational users. It was explained that because a fifteen year EBS lease term does not provide assured access to spectrum for a sufficient length of time to satisfy the needs of the investment community, funding will not flow to EBS-based broadband systems if the proposed rule is adopted. The wireless system developers explained how adoption of a fifteen year maximum lease term will jeopardize the deployment of advanced wireless broadband systems using the EBS spectrum because investment will be driven to other spectrum (such as 700 MHz, the Wireless Communications Service at 2.3 GHz, the Advanced Wireless Service at 1.7/2.1 GHz or the Broadband Radio Service at 2.5 GHz). The net result, they explained, will be an end to the

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symbiotic relationship between commercial service providers and EBS. Lease-driven funding that has been critical to the exponential growth of EBS over the past two decades will be jeopardized, educators will not have access to the commercial advanced wireless networks that EBS licensees cannot practically deploy on their own, and the handful of EBS licensees that are not dependent on leasing revenues for their EBS activities will be denied the new advancements in EBS technology that will inevitably result if commercial activities using the band thrive.

The participants also explained that permitting lessees to negotiate rights of first refusal that would extend beyond a fifteen year maximum EBS lease term will not provide sufficient certainty of spectrum availability. They stressed that rights of first refusal can readily be circumvented, and thus investors will not view them as providing assurance that the spectrum will be available beyond the fifteen year term. Moreover, they noted that such rights can only be of value to the incumbent service provider if the EBS licensee enters into a new lease that commences immediately upon expiration of the former one, and that even in such cases, rights of first refusal provide no protection of the operator's cost structure.

The broadband system operators noted that imposition of an uneconomic maximum lease term is not necessary to protect EBS licensees. They noted that the leasing marketplace is highly competitive, with a prospective EBS lessor able to negotiate with multiple potential lessees to extract the concessions that best meet its needs. They provided a variety of examples of situations where EBS licensees have negotiated excess capacity leases that extend beyond fifteen years, while affording the EBS licensee the ability to gain use of additional spectrum or services over the course of the agreement should educational needs change. However, it was stressed that these contractual provisions vary from case to case based upon the differing needs of different EBS licensees, and that there is no "one size fits all" model that the Commission should incorporate into its rules. Thus, they urged that the Commission not return to the policies of the 1980s and 1990s, when the Commission mandated specific spectrum recapture requirements that did not meet the needs of many educators, but limited their flexibility to negotiate for solutions better tailored to those needs. Rather, it was suggested that the Commission afford EBS licensees the flexibility to identify their own local educational needs and to craft their own solutions. It was also noted during the course of the meeting that many within the EBS community have expressed support for allowing EBS licensees to enter into leases in excess of fifteen years, both by actually entering into leases in excess of fifteen years and through filings with the Commission in WT Docket No. 03-66.

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Pursuant to Section 1.1206(b) of the Commission's Rules, an electronic copy of this letter is being filed with the office of the Secretary. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel for the Wireless Communications
Association International, Inc.

cc: Fred Campbell